

JUN 8 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BARRY FRANCIS WHITE,

Defendant - Appellant.

No. 05-50284

D.C. No. CR-04-01325-JFW

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Submitted June 6, 2006^{**}
Pasadena, California

Before: REINHARDT, TROTT, and McKEOWN, Circuit Judges.

Barry White appeals his conviction under 18 U.S.C. § 924(c)(1) for “carrying” a firearm “during and in relation to” one or more drug trafficking crimes. A jury found White guilty of violating § 924(c)(1) and of, *inter alia*,

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

distribution of marijuana and possession with intent to distribute marijuana, the drug trafficking crimes underlying his § 924(c)(1) conviction. White contends that there was insufficient evidence to support the § 924(c)(1) conviction. We affirm.

White's contention that he did not "carry" a firearm, as that term is used in § 924(c)(1), because there was no evidence that he "physically transported" the firearm at issue is foreclosed by *Muscarello v. United States*, 524 U.S. 125 (1998). *Muscarello* overruled the Ninth Circuit cases upon which White relies, and held that "[n]o one doubts that one who bears arms on his person 'carries a weapon'" for purposes of § 924(c)(1). 524 U.S. at 130. Here, the government proffered undisputed evidence that White had a loaded .38 caliber handgun in his back pocket.

There was also sufficient evidence adduced at trial to prove that White carried the firearm "during and in relation to" at least one drug trafficking offense. The evidence is undisputed that White had the loaded .38 in his pocket while he was committing the drug trafficking crimes. And, the jury heard expert testimony that drug dealers ordinarily keep loaded firearms nearby in order to "facilitate" their crimes. *See United States v. Stewart*, 779 F.2d 538, 539 (9th Cir. 1985)

(overruled in part on other grounds by Bailey v. United States, 516 U.S. 137 (1995)).

Accordingly, White's conviction under 18 U.S.C. § 924(c)(1) is

AFFIRMED.